IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1285 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMKISHORE RAMPRATAP SHARMA

Versus

C PATEL & CO. THRO' CHIMANBHAI B PATEL

Appearance:

1. Civil Revision Application No. 1285 of 2002

MR NK MAJMUDAR for Petitioner No. 1-2

MR MEHUL SHARAD SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 16/01/2003

ORAL JUDGEMENT

This revision application is filed against the order passed by the ld. 2nd Jt. Civil Judge (SD) Mehsana, camp at Kalol. The present applicants are the

ori. defendants of Spl. Civil Suit No. 361 of 1992 pending before the Civil Judge (SD) Court, at Kalol, Dist. Mehsana. The present opponent filed the above said suit for the recovery of Rs. 1,30,848/- from the present applicants. In the said suit vide ex. 143 the present applicants/defendants filed an application stating that earlier a Spl. Civil Suit No. 342/1991 was filed against them for the recovery of the amount which was compromised on 10.7.1992 and the Execution Application came to be filed bearing No. 2/1993 in the court and the amount of that suit was paid. It was stated that the document at ex. 39 by which the present Spl. Civil Suit No. 361 of 1992 has been filed by the ori. plaintiff, has been cancelled and thereafter on 1.10.1988, a fresh agreement was executed between the parties. It is the say of the applicants in that application exh. 143 that all the payments of the Civil Suit No. 361/1992 has been paid to the plaintiff earlier. Ld. Civil Judge (SD) Kalol rejected the application ex. 143 stating that both the suits and both the transactions and parties also were different and, therefore, the application of present applicants/defendants was liable to be rejected, hence, this revision application.

Ld. Advocate Mr. NK Majmudar on behalf of the applicants and ld. advocate Mr. Mehul Sharad Shah on behalf of the respondent were heard.

As submitted by the ld. advocate appearing for the applicant the suit is proceeded with and the evidence of the plaintiff's side is over. Even the deposition of the defendants is also recorded.

Now, it is the contention of the present applicants/defendants that they have made the payment for which opponents have filed this suit. In terms, it is contended that amount which was claimed in Spl. Civil Suit No. 342 of 1991 is again claimed in this Spl. Civil Suit No. 361 of 1992 and payment of which is made to the plaintiff. It is a matter of evidence to decide the contention raised by the defendant in the Civil Suit which is pending and proceeded with by the trial court. The issue is such as it cannot be decided without the evidence and merely on pleadings. In this view of the matter, the ld. trial judge has rightly rejected the application of the present applicants/defendants and in this revisional jurisdiction, I do not find that any jurisdictional error has been committed in rejecting the application ex. 143 by the ld. trial judge.

However, the applicants/defendants will be at liberty to prove their case by evidence if at all the plea is taken as regards the payment already made of the suit debt. The present applicants/defendants will be at liberty to lead evidence according to law. It is hoped that both the parties shall cooperate in disposing of the civil suit pending before the trial court.

In this view of the matter, this revision application stands dismissed with no order as to costs.

(J.R. VORA, J.)
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